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**OFFICE OF PETITIONS**

In re Application of  
Michael J. Hier et al.  
Application No. 10/711,692  
Filed: September 30, 2004  
Attorney Docket No. MASL-68

: DECISION DISMISSING  
: PETITION

This is a decision on the petition filed November 4, 2004, in response to the Notice of Omitted Items mailed October 26, 2004, requesting that Figures 3A-3B be accepted as having been filed with the original application. The petition is being treated under 37 CFR 1.182.

On September 30, 2004 the application was filed.

On October 26, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of September 30, 2004, but Figures 3A-3B described in the specification appeared to have been omitted from the application.

In response, on November 4, 2004, the present petition was filed. Petitioners argue that the application was filed electronically via the Office's Electronic Filing System (EFS) on September 30, 2004 and that Figures 3A-3B was submitted with the original application. In support, petitioners have included a copy of the Acknowledgment Receipt, with a time stamp date of September 30, 2004, acknowledging receipt of, *inter alia*, "drawings-pdf". Petitioners therefore assert that Figures 3A-3B were received by the Office on September 30, 2004.

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. Upon a review of the Office EFS database and the original XML documents however, it was noted that only three sheets of drawings were filed with the application papers filed September 30, 2004 and they did not include Figures 3A-3B.

The petition is **DISMISSED**.

The copy of Figures 3A-3B supplied with the present petition will not be used for processing or examination, but will be retained in the application file. Petitioner may file Figures 3A-3B as a preliminary amendment. If Figures 3A-3B are filed as a preliminary amendment, the amendment will be reviewed for new matter.

As the evidence presented is not sufficient to prove that Figures 3A-3B were filed with the application when filed, the evidence is insufficient to show that the error was committed by the USPTO and thus, the petition fee will not be refunded.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 30, 2004, using only the application papers filed on that date and not the copy of Figures 3A-3B submitted with the petition.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



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Office of Petitions